

MEMORANDUM

TO: Mayor Craig Brown and Members of Council

CC: City Manager Office, Executive Leadership Team, City Attorney Office

FROM: Sally Bakko, Director of Policy and Governmental Relations

DATE: August 8, 2023

RE: Legislative Report: Austin and Washington Update

Please find below an update on legislative activities in Austin and Washington. *(To access links below, control+click on link.)*

Gulf Coast Protection District (GCPD) Update

The [Gulf Coast Protection District](#) Board of Directors will meet at 10:00 am on Wednesday, August 9, 2023, at the Kaila M. Sullivan Chapel & Hall, 5000 NASA Rd 1, Seabrook. [Access agenda](#) and you may watch and listen to the meeting via the live broadcast. [View Live Stream](#)

San Jacinto Region 6 Regional Flood Planning Group Update

The [San Jacinto Region 6 Regional Flood Planning Group](#) (San Jacinto RFPG) will meet at the Harris-Galveston Subsidence District, 1660 West Bay Area Blvd., Friendswood, at 9:00 am on Thursday, August 10, 2023. You can access the meeting agenda [here](#).

Austin Update

Governor Abbott Signs Legislation Addressing Illegal Street Racing

This week Governor Greg Abbott signed into law HB 1442 an HB 2899, legislation that enhances penalties for perpetrators of illegal street racing and provides law enforcement and prosecutors additional enforcement tools.

- [H.B. 1442](#) (1) creates a criminal offense of intentionally establishing, maintaining, or participating in a combination of or in the profits of, or as a member of a criminal street gang to conspire to operate a motor vehicle while engaging in a reckless driving exhibition; and (2) deems any property, including real, personal, or tangible property, used in the commission of or conspiracy to operate a motor vehicle while engaging in a reckless driving exhibition as contraband, subject to seizure by law enforcement. (Effective September 1, 2023.)
- [H.B. 2899](#) requires a peace officer to impound a vehicle used in the commission of the offenses of racing on or obstructing a highway. (Effective immediately.)

New Laws Become Effective Soon

1. Open Meetings Act (OMA) and Public Information Act (PIA) Bills, Effective September 1, 2023

[H.B. 3440](#) makes changes to the requirement for posting an agenda of a meeting under the OMA. Beginning September 1, cities and economic development corporations (EDC) will be required to concurrently post their governing bodies' notice of a meeting and agenda of the meeting on their applicable websites if the city or EDC has a website.

[H.B. 30](#) eliminates the so-called "dead suspect" loophole which has allowed public entities to withhold information in criminal cases that did not result in a conviction or deferred adjudication even when the suspect was dead. Beginning on September 1, records that are held by a law enforcement agency or prosecutor that deal with the detection, investigation or prosecution of a crime that does not result in a conviction or deferred adjudication may not be withheld from public disclosure under the law enforcement exception of the PIA if: (1) a person who is described by or depicted in the information, record, or notation, other than a peace officer, is deceased or incapacitated; or (2) each person who is described by or depicted in the information, record, or notation, other than a person who is deceased or incapacitated, consents to the release of the information, record, or notation. A city may use other applicable exceptions to disclosure under the PIA to withhold such information.

[H.B. 3033](#), addresses the following issues:

- **Business Days.** Re-defines "business day" when calculating deadlines under the PIA to mean any day other than: (1) a Saturday or Sunday; (2) a national holiday or state holiday; (3) days on which Rosh Hashanah, Yom Kippur or Good Friday falls if the city's officer for public information observes the day; (4) the Friday before or Monday after a national or state holiday if the holiday occurs on a Saturday or Sunday and the city observes the holiday on that Friday or Monday; and (5) a day designated by the city's chief administrative officer as a day on which the city's administrative offices are closed or operating with minimum staffing not to exceed ten days each calendar year.
- **Litigation Exception.** Provides litigation exception under the PIA will not apply to information held by the city if the information is related to a general, primary or special election.
- **E-Requests for Attorney General (AG) Opinions.** Requires requests for AG decisions under the PIA, other than those that are hand delivered to the AG, be submitted through the AG's designated electronic filing system. A city is not required to submit a decision request through the AG's electronic filing system if the amount or format of responsive information at issue in a particular request makes use of the system impractical or impossible.
- **Release of Public Information After Receiving an Attorney General Ruling.** Creates a process the city must follow after receiving an AG ruling to ensure timely release of public information. As soon as practicable and within a reasonable time, but not later than the 30th day after the AG opinion release date regarding the requested information.
- **Open Records Training.** The AG may require each city public official complete PIA training if the AG determines that the city has failed to comply with PIA requirements.
- **Release of Basic Arrest Information.** Requires a city to promptly release basic arrest information in response to a request unless the city seeks to withhold information under the PIA and regardless of whether the city requests an AG decision regarding other information subject to the request.
- **Voluminous Requests.** The bill made some changes related to dealing with vexatious requestors. The Texas Municipal League (TML) describes the changes in this [memo](#).

2. Building Permits and Public Infrastructure Project-related Fees

[H.B. 1922](#), Effective on January 1, 2024. Currently, a city's governing body must hold a public hearing and vote to reauthorize any city fee charged as a condition of constructing, renovating, or remodeling a residential or commercial structure at least once every ten years. If a city fails to do so by the tenth anniversary of the fee being adopted or reauthorized, the fee will be automatically abolished by law.

[H.B. 3492](#), effective on September 1, 2023. Currently, cities cannot base any application, review, inspection, or other related fees for constructing or improving public infrastructure for a subdivision lot on the cost or value of the infrastructure project. Additionally, cities cannot require an applicant to disclose information related to the cost or value of a public infrastructure project for city acceptance of the subdivision or infrastructure project, except as required by the Federal Emergency Management Agency (FEMA) National Flood Insurance Program. Beginning September 1, 2023, cities may only determine such fees by considering the city's actual review, processing, and inspection costs related to the public infrastructure project. A city must publish fee amounts, city employee hourly rates and estimated times used to determine such amounts on the city's website.

Federal Court Rules Austin STR Ordinance Unconstitutional

This week a US District Court Judge David Alan Ezra ruled the City of Austin short-term rental (STR) ordinance prohibiting people from operating an STR without living at the property as unconstitutional. The City of Austin asserts the ruling does not affect the City's nuisance rules, which include provisions about noise complaints. A Houston couple filed the lawsuit claiming the ordinance unfairly prevented them from listing their Austin home. In 2016, the City of Austin issued an ordinance that prohibited non-residents from listing properties in with the intent of operating it as an STR. The lawsuit claimed the City's ordinance discriminates against non-residents in violation of the [dormant Commerce Clause](#) of the U.S. Constitution and asked for the judge to rule the City's ordinance as unconstitutional. Judge Ezra's full ruling is attached.

TWIA Board Considers Rate Increase During Galveston Meeting on Tuesday, August 8th

The Texas Windstorm Insurance Association (TWIA) Board of Directors will meet in Galveston to consider the Actuarial & Underwriting Committee recommendation of a rate increase for 2024 of 5 percent for residential policies and 8 percent for commercial policies. A [timeline of TWIA's 2023 annual rate filing consideration process](#) is available on TWIA's website. The TWIA Board will meet at the Tremont House in Galveston at 9:00 am, on Tuesday, August 8th. Members of the public are invited to provide public comment at the Tremont House in Galveston or virtually via [Zoom](#). Members of the public are invited to submit written comments via email at PublicComment@TWIA.org. Attached is the comment letter signed by Galveston Mayor Craig Brown to the TWIA Board of Directors regarding recommendations from the Actuarial & Underwriting Committee on premium rates for the annual rate filing.

Washington Update

White House Releases Draft Regulations to Modernize and Accelerate Permitting

Last week the White House Council on Environmental Quality (CEQ) [released](#) a [proposed rule](#) to fully implement and build upon new permitting efficiencies directed by Congress under the *Fiscal Responsibility Act of 2023* (debt ceiling agreement). The proposed rule is intended to modernize and accelerate reviews under the *National Environmental Policy Act* (NEPA), encourage early community engagement, strengthen energy security, and advance environmental justice. NEPA changes would include clarifying the roles of lead and cooperating agencies, setting deadlines and page limits, and additional requirements to ensure timely and unified environmental reviews; the proposed rule also includes a process for a federal agency to use another agency's categorical exclusion. The proposed rule is open for public comment through September 29th.

DOJ to Propose Rule on Accessible State and Local Government Online Services

Last week the Department of Justice (DOJ) [announced](#) the upcoming publication of a notice of proposed rulemaking under Title II of the *Americans with Disabilities Act* (ADA). The proposed rule aims to improve web and mobile applications access for people with disabilities and clarify how public entities – primarily state and local governments – can meet their existing ADA obligations as many of their activities shift online. This is the first time DOJ has issued a proposed rule on website accessibility under the ADA. Once available for review on the *Federal Register*, the department will collect public comments on the proposed rule. A fact sheet will also soon be available on www.ada.gov.

HUD Announces Funding to Address Affordable Housing Barriers

The US Department of Housing and Urban Development (HUD) [announced](#) an \$85 million first-of-its-kind competitive [Pathways to Removing Obstacles to Housing](#) (PRO Housing) funding opportunity for jurisdictions to identify and remove barriers to affordable housing production and preservation. Grants to local governments, states, metropolitan planning organizations (MPOs), and multijurisdictional entities will range from \$1 million to \$10 million. Applications are due by October 30th.

Reminder - USDOT PROTECT Grant Applications Due August 18th

The US Department of Transportation is accepting applications for over \$7 billion in grant funding for the Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Program. The PROTECT program, funded through the Infrastructure Investment and Jobs Act, seeks to fund projects designed to ensure surface transportation resilience to natural hazards, such as climate change, sea level rise, flooding, extreme weather events, and other natural disasters. The PROTECT program will provide discretionary planning and Competitive Resilience Improvement Grants for surface transportation planning activities, resilience improvements, community resilience and evacuation routes, and at-risk coast infrastructure improvements. PROTECT grants may be awarded for transit, roadway, maritime, and bicycle and pedestrian-related projects. Funding-eligible activities include planning, construction, operations and maintenance, technology demonstrations and deployment, climate and sustainability, accessibility, and security. Find more information about the PROTECT program, eligibility, and the application process here and [here](#). PROTECT program applications must be submitted by **10:59 pm CDT on August 18, 2023**.

Reports of Interest

[Flood Insurance: FEMA's New Rate-Setting Methodology Improves Actuarial Soundness but Highlights Need for Broader Program Reform](#)

GAO-23-105977, July 31, 2023

[Building Resilience: FEMA's Building Codes Policies and Considerations for Congress](#)

Congressional Research Service, June 27, 2023

[Artificial Intelligence 2023 Legislation](#)

National Conference of State Legislatures